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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

The Right to Self-Determination

1. The final report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities" (E/CN.4/Sub.2/1993/34 and Add.1-4, hereinafter referred to as "SC Report 1993/34") contains an extensive discussion and a restrictive interpretation of the right to self-determination not supported by the Charter of the United Nations.

Self-determination and territorial integrity in the Charter

2. A review of distinctions made in the Charter of the United Nations between its purposes and principles may be helpful. Article 1 of the Charter lists the purposes of the United Nations, including, inter alia, the promotion of friendly relations among nations based on equal rights and self-determination of peoples - "all peoples" as further elaborated by common article 1.1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The purposes listed in article 1 of the Charter are to be pursued according to certain principles including members refraining from the use of force threatening the territorial integrity of other members. The Charter does not

use the word "people" selectively to include or exclude certain peoples, or certain continents, or certain historical circumstances, or before or after certain dates. The Charter also clearly states that Member States are to refrain from threatening the territorial integrity of another Member State.

3. The Charter does not condition the exercise of people's right to self-determination by an absolute respect for the territorial integrity of Member States. In addition, by enumerating the right to self-determination among the purposes of the United Nations and the respect for the territorial integrity of States among the principles upon which those rights are to be pursued, the Charter may be giving precedence to the right to self-determination over the respect for territorial integrity. At most, a balancing requirement between the right to self-determination and the territorial integrity of States may be implied from the language of the Charter. Nowhere does the Charter imply or suggest that the right to self-determination may be denied where the territorial integrity of a State is threatened. Yet States attempt to restrict the right to self-determination by defining the term "people" as restrictively as their own State interests would require, regardless of the Charter. Similarly, SC Report 1993/34 restricts the right to self-determination in a manner not supported by the Charter.

Misplaced emphasis on territorial integrity

4. SC Report 1993/34 (para. 59) restricts the search for a just world order within the confines of "the territorial integrity of sovereign States while promoting the right to self-determination of the peoples of non-self-governing and occupied territories".

5. The restrictive discussion of the right to self-determination and the emphasis on maintaining the territorial integrity of inherited States is more explicit in a progress report by the same Special Rapporteur (E/CN.4/Sub.2/1992/37 and Add.1 and 2, hereinafter referred to as "SC Report 1992/37)". While accepting the fact that some aspects of the right to self-determination are non-controversial, such as in cases of colonial domination, SC Report 1992/37 arbitrarily limits even this non-controversial aspect to territories beyond Europe (para. 161) and territories subjected to alien domination after the Charter of the United Nations was adopted in 1945 (para. 162). We are told that, before 1945, many of the States which exist currently were formed through conquest and military occupation, therefore to change those borders will play havoc with world order, and that in many of those countries people have learned to live together (para. 163). Not a convincing argument if one considers current developments in the territories of the former USSR where peoples may "have learned to live together" only under the threat of force and repression.

The case of federations formed through the "voluntary accession of republics"

6. SC Report 1992/37 (para. 164) places another unjustified restriction on the right to self-determination by limiting it to federations which were formed through the "voluntary accession of republics" and whose constitution guarantees the right to secession, of which "the most prominent examples are the Soviet Union and the Yugoslav federation". To consider the Soviet Union a

"voluntary accession" of republics is simply ignoring the history of Russian colonialism and subsequent Bolshevik military conquest in Europe, Asia, and the Trans-Caucasus.

The requirement of democratic Government

7. SC Report 1992/37 (para. 165) suggests that, beyond the limited circumstances cited above, the unilateral right to self-determination is extremely doubtful and overridden by the right to territorial integrity so long as the State conducts itself according to principles of equal right and self-determination of peoples and is possessed of a government representing the whole of its citizens. The underlined section restates the 1970 General Assembly Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations resolution 2625 (XXV).

8. Yet SC Report 1993/34 (para. 84) also restricts the interpretation of resolution 2625 (XXV) by stating that representatives of minority groups concerned must "prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, [to] be entitled to demand and to receive support for a quest for independence. If it can be shown that the majority is pursuing a policy of genocide against the group, this must be seen as very strong support for the claim of independence". In the same paragraph, it is admitted that "[u]nfortunately, when violence has reached such levels, there is at present no machinery at the international level to which the aggrieved party can turn for an impartial finding".

9. Since the Charter was adopted, aggrieved minority groups have presented to United Nations forums credible claims evidencing a threat to their existence and identity, including claims of impending or actual genocide. Yet, the international community was unable or unwilling to stop the atrocities, including genocide, massacres, deportations and massive violations of human rights and fundamental freedoms. Another problem in SC Report 1993/34 is the requirement to prove such violations "beyond any reasonable doubt", an extremely high standard for proof which will be impossible to meet unless genocide is already in progress, in which case it would be already too late for the international community to do anything to remedy the situation and safeguard the existence and identity of a threatened group. In other words, if a Government denies the charges brought forward by a minority group, "reasonable doubt" will be established. Given the long delays in international forums (not to speak of political considerations) and the standard of proof required, aggrieved groups are left with no alternative but to resort to self-help and self-defence, a prescription for a vicious cycle of violence and human rights abuses.

"Minority" v. "people"

10. SC Report 1993/34 (para. 75) recognizes that there is "considerable controversy" as to who constitutes a "people". However, the report continues, "the World Conference on Human Rights contributed a partial clarification of this issue" by limiting the right to self-determination to "peoples under

colonial or other forms of alien domination or foreign occupation". At best, it would be premature to announce that the Vienna Declaration even partially clarified disputes over legal principles.

11. Indeed, the terms "minority" and "people" have been difficult to define legally, as experienced by the Sub-Commission, and are subject to deliberate confusion and abuse by States attempting to restrict the rights of minority groups within their territory. The predicament of a definition is recognized in para. 3 of SC Report 1992/37 in which it is stated, "the line between 'minority' and 'people' has become increasingly blurred and has to be addressed". The difficulty arises from the dichotomy created in international law between the two terms when the consequences of categorizing a group under either term may merge into the same result. The consequence of classifying a group as a minority may range from granting the group members minimal equal rights - the free exercise of religious rights, use of language, etc., to the granting of more affirmative group rights such as various degrees of cultural, administrative and territorial autonomy, as well as the right to self-determination if the dominant Government is not representative of all groups in the territory. The consequence of classifying a group as a people may also range from the various forms of cultural, administrative and territorial autonomy, to a maximum right to self-determination, including secession, border changes, and independence.

12. The dichotomy between the terms "minority" and "people" maintained in international law no longer serves a useful function. On the contrary, it serves only to suppress the legitimate grievances of groups and to deny the right to self-determination to minority groups or peoples, thus encouraging conflict and abuses of human rights.

13. The international community should do away with the dichotomy and start to address minority/peoples problems in terms of the end result, that is minority groups within States are entitled to a spectrum of rights ranging from minimal equal rights, to the right to speak their own language or exercise their own religion, to the more affirmative right to education in their own language, to various forms and degrees of autonomy, and finally, when all else fails, to full self-determination. International law will not be contradicted if the minimal "minority rights" and maximal "peoples rights" are considered as the two poles of a spectrum of rights.